

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, : Case No. 1:01-cv-116
: (Judge Sandra S. Beckwith)
Plaintiff, :
: MOTION BY RECEIVER FOR ORDER
v. : APPROVING DISTRIBUTIONS TO
STEPHEN G. DONAHUE, et al., : SIPC TRUSTEES AND INVESTORS
: AND MEMORANDUM IN SUPPORT
Defendants. :
:

Comes now Michael R. Barrett as the receiver for defendant Stephen G. Donahue (the “Receiver”) and moves the Court for entry of an order in the form of that tendered herewith distributing the assets in the hands of the Receiver as follows:

1. To the investors as partial repayment for surrender charges incurred by them in the total amount of \$670,500.00 as more fully set forth on the list attached to this motion marked Exhibit A.
2. To Douglas L. Lutz as the substitute trustee for Donahue Securities, Inc. and S.G. Donahue & Company, Inc. pursuant to the federal Securities Investor Protection Act, 15 U.S.C. § 78999-111 (“SIPA”) and orders entered in case number 1:01-cv-117 in this Court and Adversary Proceeding Number 01-1027 in the Bankruptcy Court for this District (the “SIPC Trustee”) in the amount of \$404,925.75.
3. To the Receiver as approved by the Court after separate motion for fees and expenses in an amount currently estimated to not exceed \$12,500.00.

4. To counsel for the Receiver, namely Ulmer & Berne, LLP and Greenebaum Doll & McDonald PLLC, as approved by the Court after separate motion for fees and expenses in an amount currently estimated to not exceed \$20,000.00.

5. The balance, if any, to the SIPC Trustee in an amount currently estimated to not exceed \$-0-.

Respectfully submitted,

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MEMORANDUM

The Court has entered an order granting the motion by plaintiff United States Securities and Exchange Commission (the “SEC”), inter alia, to approve the agreement between the SEC, the SIPC Trustee and the Receiver to distribute the assets in the hands of the receiver (the “Distribution Agreement”).

The Receiver is holding approximately \$1,107,000.00.

The Distribution Agreement is based on the following facts. The SIPC Trustee collected a total of \$3,641,883.37 and paid out a total of \$4,113,443.70 to investors. The difference between those amounts is \$471,560.33 (the “SIPC Shortfall”). Of the 133 investors, 109 incurred surrender charges on liquidations of annuities to the invest annuity liquidation proceeds in the fictitious tax free bond fund in the total amount of \$780,665.07 (the “Surrender Charges”). The SIPC Trustee refused to reimburse the investors for the Surrender Charges on the grounds

they are not covered under SIPA. The SIPC Shortfall plus the Surrender Charges total \$1,252,225.50 (the "Total Claim"). The SIPC Shortfall represents 37.65776% of the Total Claim and the Surrender Charges represent 62.34223% of the Total Claim.

The current unpaid fees and expenses for the Receiver and his counsel total approximately \$12,000.00. The Receiver and his counsel anticipate further fees and expenses to make the distributions to the investors and to file a final report and final applications should not exceed \$20,500.00.

Consequently, the Receiver proposes a total hold back of \$32,500.00. In the event the hold back is insufficient, the Receiver will seek reimbursement from the SIPC Trustee and in the event the hold back exceeds expenses, the Receiver will pay that excess to the SIPC Trustee. The SIPC Trustee is under no obligation to pay any such reimbursement request by the Receiver.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion by Receiver for Order Approving Distributions to SIPC Trustee and Investors and Supporting Memorandum was served on September 30, 2005 electronically pursuant to the CM/ECF procedures established by the Court and by ordinary United States mail, first class postage prepaid, on all persons listed on the attached service list.

/s/ Richard Boydston

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